IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3676 OF 2005

IN

SUIT NO.2814 OF 2002

Macleods Pharmaceuticals Ltd. ...Plaintiffs.

vs.

1.Indian Institute of Technology
and others. ...Defendants.

Ms.Alpana Ghone i/b. M/s.Kanga & Co., for Plaintiffs.

Mr.Rahul Kadam i/b. Mr.H.W.Kane, for Defendants.

CORAM: D.K.DESHMUKH,J.

DATED: 25th June,2007.

P.C.:-

1. This is a notice of motion taken out by the plaintiffs. The plaintiffs have filed the suit claiming decree of declaration of various

nature. Basically, the claim of the plaintiffs is that the Court should pass a decree of declaration in favour of the plaintiffs declaring that the plaintiffs are the owner of the copyright in all the 2-dimensional drawings, designs and the 3-dimensional models of Dry Powder Inhalers developed by the defendants in Phase One of the project under the contract mentioned in the plaint. The plaintiffs had taken out a notice of motion no.2278 of 2002 in this Suit. The first prayer in that notice of motion was for appointment of the Receiver to take possession of that design. That was prayer clause (a). Prayer clause (b) was for an order of temporary injunction restraining the defendants from using that design. That notice of motion has been disposed of by order dated 24.2.2005. By that order on recording prima facie satisfaction that the plaintiffs have proved that they are the owners of copyright in the design in question,the Court granted order of temporary injunction in

terms of prayer clause (b). The Court did not grant an order in terms of prayer clause (a).

2. Now by this notice of motion a mandatory order is claimed directing the defendants to hand over the design to the plaintiffs. In my opinion, for two reasons the notice of motion has to be dismissed:- (i) Prayer clause (a) of the present notice of motion and prayer clause (b) of the suit is identical. Prayer clause (b) of the suit is for final decree and prayer clause (a) of the notice of motion is for interim order. The settled law is that usually Court does not grant final reliefs by an interim order.

(ii) The second reason is that by the earlier notice of motion no.2278 of 2002 the plaintiffs were claiming an order against the defendants to deliver the design to the Court Receiver. The Court by order dated 24.2.2005 did not grant that relief and therefore, the relief claimed by prayer clause (a) of that notice of motion was

impliedly rejected by the Court. The relief claimed by this notice of motion is larger than the relief that was claimed by prayer clause (a) of the notice of motion no.2278 of 2002. If lesser relief is rejected by the Court by its earlier order obviously larger relief cannot be granted by the subsequent order without there being any change in circumstances. The notice of motion is therefore, disposed of.